reflects his belief that he was entitled to statutory protection, a belief which has turned out to be unfounded, but it is quite inconsistent with his having, or showing, any intention to give up such security as he enjoyed. As regards the covenant to yield up, their Lordships cannot regard a routine provision of this kind as sufficient to displace the vitally important right of the respondent to remain in possession while exercising his profession. It must have been in contemplation, as in fact happened, that the respondent would continue to hold over after the fixed period of three years; the estoppel, though perhaps unnecessary during the fixed term, remained as relevant to the legal relations of landlord and tenant, and as essential for the tenant as it had previously been. Their Lordships therefore cannot find that the benefit of the estoppel was removed by the events of 1961. It continued and continues in effect for the respondent's benefit.

Their Lordships will therefore dismiss this appeal: the appellants must pay the costs of the appeal.

Appeal dismissed.

Solicitors: *Coward Chance; C. Butcher & Simon Burns.*

SINGAPORE REPORTS

SINGAPORE PAK HOCK PAI ATHLETIC ASSOCIATION v. YIU PEK HENG

[C.A. (Chua, Kulasekaram & Tan Ah Tah JJ.) May 25, 1973]

[Singapore — Civil Appeal No. 7 of 1973]

Practice and Procedure — Lis pendens — Whether order can be made — R.S.C. 1934, O. 47 and R.S.C. 1670 — Supreme Court of Judicature Act (Cap. 15) ss. 18 & 82.

The appellants applied *ex parte* for a *lis pendens* order against a certain property which they claimed were bought partly out of funds belonging to them. The application was granted. The respondent then applied to set aside the order on the ground that the 1970 R.S.C. did not provide for the making of such an order. The learned Chief Justice who heard the application granted the respondent's application. On appeal,

Held, allowing the appeal: although the 1970 R.S.C did not specify the forms and methods of procedure for an application for a *lis pendens* order, section 82(2) of the Supreme Court of Judicature Act was applicable and the relevant forms and methods of procedure provided for in the R.S.C. 1934 O. 47 might be used as they were not inconsistent with the 1970 Rules.

COURT OF APPEAL.

Ng Wing Cheong for the appellants.

Mohan Singh for the respondent.

Chua J. (delivering judgment of the court): The respondent in this appeal claims possession of the premises known as No. 22 Lorong Limau, Singapore. In their defence the appellants claim, *inter alia,* that the premises were purchased partly out of funds belonging to them and hence they are beneficially entitled to the said premises to the extent of the purchase price so paid and contributed by them.

The appellants made an application *ex parte* for a *lis pendens* order against the said property and on the 23rd day of February, 1973, Mr. Justice Choor Singh made an order in terms of the application.

The respondent then applied to set aside the *lis pendens* order on the ground that there is no longer any jurisdiction for the High Court to make such an order and on the 9th day of March, 1973, the learned Chief Justice granted an order in terms of the respondent's application. At the hearing of the application the learned Chief Justice held that the Rules of the Supreme Court, 1970, did not provide for the making of a *lis pendens* order and hence the order made by Mr. Justice Choor Singh was wrong.

It is against this order of the learned Chief Justice that this appeal arises.

Provisions were made in Order 47 of the Rules of the Supreme Court, 1934, for "interlocutory orders as to the interim preservation of property, mandamus, injunction, etc." of the subject matter of an action and Order 47 rule 21 provided that:

"21.—(1) Whenever the right or title to any immoveable property, or any interest therein, is in question in any action, and such right, title, or interest is liable to be conveyed or assigned by any party to the action, so as to defeat or prejudicially affect any interest claimed therein by any other party, such last mentioned party may apply, by summons *ex parte* to the court or a judge, for a declaration that the

right to such immoveable property is in question in the action, and the court or judge may make or refuse such order on such terms as seem just.

(2) The order, if made, shall sufficiently describe the property affected, and shall state the period not exceeding twelve months, during which the order shall be in force as a *lis pendens*."

and Order 47 rule 22 provided for the registration of the *lis pendens* order under the Registration of Deeds Ordinance.

Section 18 of the Supreme Court of Judicature Act (which came into force on the 9th January, 1970, and hereafter referred to as the Act) sets out the powers of the High Court and it reads:

"(1) The High Court shall have all such powers as are vested in it by any written law for the time being in force in Singapore.

(2) Without prejudice to the generality of sub-section (1) of this section the High Court shall have the powers set out in the First Schedule to the Act:

Provided that all such powers shall be exercised in accordance with any written law or Rules of court relating to them."

By paragraph 6 of the First Schedule of the Act the High Court is given the —

"Power to provide for the interim preservation of property the subject matter of any cause or matter by sale or by injunction or the appointing of a receiver or the registration of a *caveat* or a *lis pendens* or in any other manner whatsoever."

The Rules of the Supreme Court, 1970, came into force on the 2nd January, 1971. Provisions were made in Order 29 for "Interlocutory Injunction, Interim Preservation of Property, Etc." of the subject matter of a cause or matter but there is no specific provision for the making of a *lis pendens* order. By Order 93 the Rules of the Supreme Court, 1934, were repealed.

It is argued before us that since the Rules of the Supreme Court, 1934, were repealed and the Rules of the Supreme Court, 1970, do not expressly specify the forms and methods of procedure for applying for a *lis pendens* order and there is no provision for such an order to be registered under the Registration of Deeds Act the High Court has no jurisdiction to make a *lis pendens* order.

We are unable to accept that argument. To accept that argument would be to contradict the express provision contained in section 18(2) of the Act which is an express enactment that the High Court shall have the power to make a *lis pendens* order.

It is also our view that since the 1970 Rules do not specify the forms and methods of procedure for an application for a *lis pendens* order then section 82(2) of the Act is applicable and the relevant forms and methods of procedure as provided for in Order 47 of the 1934 Rules may be used as they are not inconsistent with the provisions of the Act or with the 1970 Rules.

Section 82(2) provides:

"(2) Subject to the provisions of this Act and Rules of court, all forms and methods of procedure and practice which, under any written law, order rules or custom whatsoever, were formerly in force in the High Court or the Federal Court in Singapore and which are not inconsistent with the provisions of this Act or with Rules of Court, may continue to be used in the Supreme Court in the like cases and for the like purposes as those in and for which they would have been applicable in the former respective courts."

For these reasons we would allow the appeal with costs.

Appeal allowed.

Solicitors: *Ng & Ng; L. A. J. Smith.*

TAI TONG REALTY CO. (PTE) LTD. v. GALSTAUN & ANOR.

[O.C.J. (Choor Singh J.) June 21, 1973]

[Singapore — Motion in Suit No. 653 of 1973]

Contract — Sale of land — Sale "subject to contract" — No agreement until formal contract is signed.

The defendants had given an option to the plaintiffs to purchase a piece of land and house thereon "subject to contract". The plaintiffs exercised the option by letter and requested for the title deeds and draft contract but the defendants returned the letter and deposit. The plaintiffs thereupon brought an action to enforce the agreement and subsequently applied for an injunction to prevent the defendants from selling the property until judgment in the action.

Held: as the sale was clearly subject to contract and as no formal contract had been signed by the parties there was no binding agreement between them, and the plaintiffs were therefore not entitled to the injunction which they sought.

Case referred to:

(1) *Spottiswoode Ballantyne & Co. Ltd.* v. *Doreen Appliances Ltd. & G. Barclay (London) Ltd.* [1942] 2 All E.R. 65.

MOTION.

K. A. O'Connor for the plaintiffs.

K. E. Hilborne for the defendants.

Choor Singh J.: The question to be answered on this motion is short and simple and it is this: what is the meaning and effect of the expression "subject to contract" which appears in an option granted by the defendants to the plaintiffs to purchase their property at 27 Tomlinson Road, Singapore.

The facts which have given rise to this question are not in dispute. On the 31st July 1972 the defendants gave a written option to the plaintiffs in the following terms: —

"In consideration of the sum of Singapore $2,000 received by us from you this day we hereby give you an option to purchase our property known as 27 Tomlinson Road, Singapore 10 containing an area of 45,843 sq. ft. at the price of Singapore $16.75 (Singapore dollars sixteen and seventy five cents) per sq. ft. on the following terms and conditions:—

1. The sale is subject to contract.
2. The property is to be sold with vacant possession to be given within three months from the date of contract for Sale and Purchase.
3. The sum equivalent to 10% of the purchase price must be paid to our solicitors, Messrs. Advani & Hoo of 7E-1, Asia Building, Singapore 1, on the exercise of this option.
4. The contract for the Sale and Purchase shall be executed within six weeks of the date of exercise of this option.